

Remediation and Redevelopment Division

Michigan Department of Environment, Great Lakes, and Energy

Certificate of Deposit Part 213.doc
04/21/2020

CERTIFICATE OF DEPOSIT OR TIME DEPOSIT ACCOUNT PART 213

This document provides instructions on the use of a Certificate of Deposit (Certificate) or Time Deposit Account (Account) to fulfill the requirements for financial assurance pursuant to Section 21309a(2)(f) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism (FAM) and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 21309a of the NREPA, if initial actions under Section 21307 have not resulted in the completion of corrective action, an owner or operator that is liable under Section 21323a shall prepare a corrective action plan to address contamination at the site. If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system is required.

If the proposed FAM is an interest-bearing mechanism, the value of the FAM may be determined through a present worth analysis. EGLE guidance on present worth analysis can be found at the following location: [Present Worth Analysis Calculator](#).

If a person elects to use a Certificate or Account to meet its financial assurance obligations (Designated Party), the Designated Party must enter an "Agreement and Acceptance of Certificate of Deposit or Time Deposit Account (as applicable)" (Agreement and Acceptance Document) with EGLE and the financial institution. The Agreement and Acceptance Document shall be:

1. Worded in accordance with the model Agreement and Acceptance Document and reviewed and approved by EGLE prior to execution. Any modification to the model language may only be made with the concurrence of EGLE.
2. Executed on the letterhead of the financial institution; list EGLE as the sole beneficiary; and include the State of Michigan's Federal Tax Identification Number: 38-6000134.
3. In an amount at least equal to, or greater than, the amount necessary to fund all monitoring, operation, and maintenance, and other costs required to assure the effectiveness and integrity of the corrective action for the time frame(s) specified in the corrective action plan.
4. Issued with a maturity date of not less than six (6) months. For Certificates or Accounts with maturity dates equal to or less than one (1) year, the Certificate or Account must provide for automatic renewal. For Certificates or Accounts that have a maturity date greater than one (1) year, the Designated Party must either renew or replace the Certificate or Account or provide an acceptable alternate form of financial assurance to EGLE at least sixty (60) days prior to the maturity date.

Please contact Mr. Brad Ermisch, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at ermischb@michigan.gov or 517-275-1173 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***.

--END OF GUIDANCE AND INSTRUCTIONS--

CERTIFICATE OF DEPOSIT OR TIME DEPOSIT ACCOUNT MODEL

AGREEMENT AND ACCEPTANCE OF [insert CERTIFICATE OF DEPOSIT or TIME DEPOSIT ACCOUNT as applicable]

Name of Designated Party: **[insert name of Designated Party]**

Designated Party's Address: **[insert Designated Party's Address]**

Name of Site: **[insert Name of Site]**

Address of Site: **[insert Address of Site]**

Facility ID No.: **[insert EGLE Facility ID number]**

Confirmed Release No. **[insert the confirmed release No. that is addressed by the corrective action]**

State of Michigan Federal Tax Identification No.: 38-6000134

It is agreed between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), and **[insert name of person submitting Corrective Action Plan]** (Designated Party) that the attached **[insert Certificate of Deposit (Certificate) or Time Deposit Account (Account)]**, **[insert Certificate or Account reference number]**, in the amount of **[\$[insert numeric amount] [(insert amount in written text)]**, issued by **[insert name of issuing financial institution and address]** on **[insert effective date]**, in the name of and for the sole benefit of EGLE, is accepted as financial assurance to pay for the monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action documented in the corrective action plan submitted to EGLE by the Designated Party on **[insert date of submittal]** pursuant to Section 21309a of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, as part of a final assessment report.

1. This **[insert Certificate or Account]** will mature on **[insert date]** and **[insert will or will not]** renew automatically.
2. All interest accruing to the **[insert Certificate or Account]** shall be maintained as part of the **[insert Certificate or Account]**.
3. EGLE's Authorized Representative (Remediation and Redevelopment Division Director) is the only person who may **[insert cash the Certificate or make withdrawals from the Account]**. If any of the following occur, EGLE's Authorized Representative may **[insert cash the Certificate or make withdrawals upon the Account]** as follows:
 - (a) If the Designated Party does not renew or replace the **[insert Certificate or Account]** or provide an alternate, acceptable form of financial assurance to EGLE at least sixty (60) days prior to the maturity date of the **[insert Certificate or Account]**, the EGLE Authorized Representative may **[insert cash the Certificate or make withdrawals upon the Account]**.

- (b) If the Designated Party does not provide for monitoring, operation, and maintenance to assure the effectiveness and integrity of the corrective action and EGLE, upon providing a 30 day notice to the Designated Party, implements the corrective actions, the EGLE Authorized Representative may **[insert cash the Certificate or make withdrawals upon the Account]** to reimburse EGLE for its corrective action costs.
4. If the **[insert Certificate or Account]** is cashed by the EGLE Authorized Representative, all accrued interest shall be paid to the EGLE Authorized Representative.
 5. If cashing the **[insert Certificate or Account]** results in a surplus of funds (i.e., funds in excess of the estimated costs for monitoring, operation, and maintenance to assure the effectiveness and integrity of the corrective action), the surplus funds will be held by the State in the Environmental Response Fund, trust, or escrow to be invested at a rate or rates of interest to be determined at the State's sole discretion. These funds will be used solely for corrective actions.
 6. The funds in the **[insert Certificate or Account]** shall remain in an amount sufficient to cover long-term corrective action costs at the Site for a thirty (30) year period. Sixty (60) days prior to the five (5) year anniversary of the maturity of this **[insert Certificate or Account]** and each subsequent five (5) year anniversary, the Designated Party shall provide to EGLE a report containing the actual long-term corrective action costs for the previous five (5) year period and an estimate of the amount of funds necessary to assure long-term corrective action costs for the following thirty (30) year period. If this cost estimate differs from the amount of the **[insert Certificate or Account]** EGLE may determine that adding additional funds to the **[insert Certificate or Account]** is warranted.

Michigan Department of Environment, Great Lakes, and Energy Authorized Representative:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

[insert name of Designated Party], Designated Party:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

Acknowledged by **[insert name of Issuing Institution]**, Issuing Institution:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____